

Supreme Court of Kentucky

ORDER

IN RE: ORDER APPROVING AMENDMENTS TO THE LOCAL RULES OF PRACTICE FOR THE 22nd JUDICIAL CIRCUIT, FAYETTE CIRCUIT COURT

Upon recommendation of the Judges of the 22nd Judicial Circuit, Fayette Circuit Court, and being otherwise sufficiently advised,

The amendments to the Local Rules of practice for the 22nd Judicial Circuit are hereby approved. This order shall be effective as of the date of this Order, and shall remain in effect until further orders of this court.

Entered this the 30th day of June 2009.


CHIEF JUSTICE

**RULES OF PRACTICE
OF THE
FAYETTE CIRCUIT CRIMINAL AND CIVIL COURTS**

TABLE OF CONTENTS

	PAGE
RULE 1	CITATION OF RULES 2
RULE 2	ORGANIZATION OF FAYETTE CIRCUIT CRIMINAL AND CIVIL COURTS... 2
RULE 3	MOTION DAY 3
RULE 4	ASSIGNMENT OF CASES 3-4
RULE 5	GRAND JURIES 4
RULE 6	MOTIONS IN CRIMINAL CASES 4
RULE 7	REQUESTS FOR FUNDS FOR EXPENSES IN CRIMINAL CASES 4
RULE 8	CRIMINAL ARRAIGNMENTS 4-5
RULE 9	WITHDRAWAL OF ATTORNEYS IN CRIMINAL CASES 5
RULE 10	PRE-TRIAL/PLEA NEGOTIATION CONFERENCE IN CRIMINAL CASES 5-6
RULE 12	COURT APPEARANCE VIA TWO-WAY AUDIO-VIDEO COMMUNICATIONS IN CRIMINAL CASES 6
RULE 13	PROBATION: ALLOCATION OF INSTALLMENT PAYMENTS 6-7
RULE 14	ASSIGNMENT OF CIVIL JURY CASES 7
RULE 15	MOTIONS IN CIVIL CASES 7-9
RULE 16	EXHIBIT RETENTION AND DISPOSAL 9-10
RULE 17	RETENTION OF VIDEO TAPES 10-11
RULE 18	FORM OF MOTIONS AND OTHER PAPERS 11
RULE 19	ENTRY OF ORDERS AND JUDGMENTS 11
RULE 20	DEFAULT JUDGMENTS 11-12
RULE 21	LEGAL BRIEFS AND MEMORANDA 12
RULE 22	ANSWERING AND FILING INTERROGATORIES OR REQUESTS 12
RULE 23	FILING OF DEPOSITIONS 12
RULE 24	ORDER OF SUBMISSION 12-13
RULE 25	DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE 13
RULE 26	PRACTICE BEFORE THE MASTER COMMISSIONER 13-16
RULE 27	PROCEDURE ON RULES FOR CONTEMPT 16-17
RULE 28	REMOVAL OF RECORDS 17
RULE 29	MEDIATION 17-19
RULE 30	APPEALS FROM DISTRICT COURT 19-20
RULE 31	PRO-SE LITIGATION 20
RULE 32	POST-TRIAL CONTACT WITH JURORS 20
RULE 33	EFFECTIVE DATE 20

RULE 1. CITATION OF RULES

These rules apply to the practice of law in the Fayette Circuit Court and shall be cited as "RFCC" or "Rules of the Fayette Circuit Criminal and Civil Court."

RULE 2. ORGANIZATION OF FAYETTE CIRCUIT CRIMINAL AND CIVIL COURTS

A. Courts. The Fayette Circuit Court shall be composed of Criminal and Civil Courts. The Criminal and Civil Courts shall have jurisdiction as provided in KRS 23A.010.

B. Divisions. The Fayette Circuit Court is a Court of continuous session, and the Court shall consist of five numbered divisions, namely:

(3rd) Third Division
(8th) Eighth Division

(4th) Fourth Division
(9th) Ninth Division

(7th) Seventh Division

C. Assignment of Judges. Cases shall be assigned, as provided by these Rules, to the divisions of the Fayette Circuit Criminal and Civil Courts, so as to distribute the workload of the Court as equally as possible among the judges. The Judge of one division of the Fayette Circuit Criminal and Civil Courts may preside over and determine any case or question in any other division of the Fayette Circuit Criminal and Civil Courts and sign any order or judgment submitted for entry in any other division of the Fayette Circuit Criminal and Civil Courts when a Judge of that division is sick, or absent from the county or is unavailable. If all the Judges of the Fayette Circuit Criminal and Civil Courts are unavailable, a Judge of the Fayette Family Court may preside over and determine any case or question in any division of the Fayette Circuit Criminal and Civil Courts and sign any order or judgment submitted for entry in any division of the Fayette Circuit Criminal and Civil Courts.

D. Transfer of Cases. After a case has been assigned to a criminal or civil division, the Judge thereof may for good cause transfer the case by written order from that division when: (1) there has been a recusal or (2) the case has been transferred with the Judge's consent. On recusal, the Court Administrator shall make a random assignment of cases that are transferred from one division of Fayette Circuit Criminal and Civil Courts to another division of Fayette Circuit Criminal and Civil Courts. The Court Administrator shall file the order of transfer in the record and serve a copy upon all parties of record. Upon such transfer being made, the Clerk will make a proper endorsement upon the docket and the record.

E. Consolidation of Cases. When two or more cases have been filed that may, as matter of right, or may, in the discretion of the Court, be consolidated and such cases are pending in different divisions of the Fayette Circuit Criminal and Civil Courts, any party to any of the cases, or the Court without motion, may have any of the cases transferred to that division of the Court in which the first of the cases was filed. If it is determined that consolidation is not proper, the Judge of that division may transfer the case back to the original division.

RULE 3. MOTION DAY

A. Designation of Day. Friday of each week during the entire calendar year is designated as Motion Day. Whenever Motion Day falls on a state holiday, Motion Day shall be the next day which is not a Saturday, Sunday or state holiday, unless otherwise ordered by the Court. If court is cancelled on Motion Day due to inclement weather, all motions scheduled for that Motion Day shall be re-docketed for the following Motion Day without the necessity of re-noticing the motions, unless otherwise ordered by the Court.

B. Designation of Times. The divisions will convene their civil and criminal motion dockets on Motion Day as follows:

Effective January 2, 2009:

CIVIL AND CRIMINAL DOCKET

	<u>CIVIL DOCKET</u>	<u>CRIMINAL DOCKET</u>
3rd Division	8:30 a.m., F – 3 rd Floor	10:30 a.m., F - 3 rd Floor
4th Division	11:30 a.m., A- 2 nd Floor	9:00 a.m., A – 2 nd Floor
7th Division	9:00 a.m., C - 2 nd Floor	1:00 p.m., C - 2 nd Floor
8th Division	1:00 p.m., B - 2 nd Floor	8:30 a.m., D - 2 nd Floor
9th Division	8:30 a.m., B - 2 nd Floor	1:00 a.m., A - 2 nd Floor

Changes may occur in docket times and places at the discretion of the Court. All changes will be posted on the Court's website at <http://courts.ky.gov/counties/Fayette> and the courthouse monitors. The schedule posted on the website and the monitors shall be controlling, and it is the responsibility of a party to check the website and courthouse monitors to determine the appropriate time and place for any docket.

RULE 4. ASSIGNMENT OF CASES

A. Random Assignment. The Clerk shall randomly assign cases equally to the criminal and civil divisions of the court. The Court will by General Order establish the method to be utilized by the Clerk for the assignment of cases.

B. Assignment of Case Number and Division. Upon the filing of a case, including the return of an indictment or the filing of an information, the Clerk shall assign a number to the case and randomly assign the case to a criminal and civil division of the court. Documentation showing the case number and the division assignment shall be attached to the record of the case.

C. Subsequent Pleadings. Pleadings, motions, orders and other papers subsequently filed in the case shall contain in the caption the case number and the criminal or civil division in which they are filed.

D. Re-filed Cases. Whenever a case, including an indictment or an information, has been dismissed without prejudice and is re-filed within one year from the date of dismissal, the parties shall, after the action has been assigned to a criminal or civil division, have the case transferred to the criminal or civil division in which it was originally filed.

RULE 5. GRAND JURIES

A grand jury shall be empanelled for each month during the year. Grand juries shall be empanelled in Divisions of the Court during the year in such rotation as the Court shall determine.

RULE 6. MOTIONS IN CRIMINAL CASES

A. Notice of Motions. The notice of a motion in a criminal case, other than a motion for probation, shock probation or prerelease probation, shall specify the date, time and place for the hearing thereof. Motions for probation, shock probation or prerelease probation shall not be noticed for a hearing but such motions shall be heard at the convenience of the court or the court may rule upon the motion without a hearing.

B. Filing Deadline. Criminal motions shall be filed with the Clerk of the Criminal Division before 12:00 P.M. on the Wednesday preceding the motion day designated in the notice.

RULE 7. REQUESTS FOR FUNDS FOR EXPENSES IN CRIMINAL CASES

A. Ex Parte Request For Funds. A defendant in a pending criminal proceeding, who is a needy person as defined by KRS Chapter 31, may apply ex parte to the Court, without notice to the Commonwealth's Attorney, for the payment of investigative, expert or other services necessary for an adequate defense.

B. Hearing. After reviewing the application, the Court may approve the application without a hearing or assign the application for a hearing. No persons other than the defendant, the defendant's attorney and Court personnel shall attend the hearing unless otherwise authorized by the court.

C. Sealing of Proceedings. The Clerk shall seal that portion of the record containing the application and the proceedings thereon including the record of the hearing and any order issued as a result thereof, except as otherwise authorized by the Court. The disclosure of the application or proceedings thereon may be punishable as a contempt of Court.

RULE 8. CRIMINAL ARRAIGNMENTS

A. Unless otherwise ordered, all defendants shall be arraigned in open Court. Arraignments by means of two-way audio-video communications shall be considered an arraignment in open court.

B. All Circuit Court arraignments in the Criminal Divisions for custodial defendant(s) shall be scheduled by two-way audio-video communication for Thursdays, the week of the indictment at 11:30 a.m.

C. The defendant, the defendant's attorney and the attorney for the commonwealth must be present at the arraignment.

RULE 9. WITHDRAWAL OF ATTORNEYS IN CRIMINAL CASES

A. An attorney shall not withdraw from employment in a criminal proceeding without permission of the Court. Within twenty (20) days of trial, an attorney of record shall not be permitted to withdraw from a criminal case in the absence of a compelling reason.

B. Retained trial counsel shall secure permission of the Court before withdrawing as counsel for a defendant who seeks to appeal a judgment of conviction. Before permission to withdraw is granted, it shall be the responsibility of retained trial counsel to prepare and file the following:

1. Notice of appeal pursuant to RCr 12.04;
2. Motion, affidavit, and order for leave to appeal in forma pauperis, if applicable;
3. Designation of record on appeal; and
4. Order substituting the Dept. of Public Advocacy as counsel on appeal, if applicable.

RULE 10. PRETRIAL CONFERENCE AND STATUS HEARING/NEGOTIATED PLEA CONFERENCE, DOCKET PASS, GUILTY PLEAS.

A. At the time of arraignment, each case shall be assigned for a pretrial conference and a status hearing/negotiated plea conference or trial. Pretrial conferences shall be held in all criminal cases. The pretrial conference shall be attended by the Commonwealth's Attorney, the defendant and his or her attorney.

B. At the conclusion of the conference, the parties shall prepare and present to the Court a notice containing the matters agreed upon and the recommendation, if any, by the Commonwealth.

C. In all criminal cases in which the defendant elects to enter a plea of guilty, the Waiver of Further Proceedings with Petition to Enter Plea of Guilty shall be signed by the defendant and attached to the record by 4:00 p.m. on Thursday or one (1) business day before the scheduled motion docket. Failure to timely file the Waiver shall result in the plea being continued to the next motion docket.

D. In any cases where the defendant intends to request a continuance of the status hearing/negotiated plea conference, a Docket Pass Form and Order shall be completed by defense counsel, signed by the defendant and tendered to the Clerk (original or fax copy) on Thursday by 4:00 p.m. or one (1) business day before the scheduled motion docket so that the defendant whose case is being passed will not be transported from the detention center for the motion docket. If a pass is sought for a defendant(s) in other institutions or detention facilities, then the Form and Order (original or fax copy) shall be filed with the Clerk by 4:00 p.m. on Wednesday or two (2) business days before the scheduled motion docket in order to avoid transport. The original Form and Order shall then be presented to the Judge for signing at the call of the motion docket. Counsel's failure to present the Form and Order in time to prevent unnecessary transport may result in Rule 11 or contempt sanctions against defense counsel.

RULE 11. RESERVED FOR FUTURE RULES.

RULE 12. COURT APPEARANCE VIA TWO-WAY AUDIO-VIDEO COMMUNICATIONS IN CRIMINAL CASES

A. Whenever a defendant's personal presence is required in court in a criminal proceeding and the defendant is confined in the Fayette County Detention Center, the defendant, in the Court's discretion, may appear via two-way audio-video communications between the Court and the Detention Center as follows:

1. Without the defendant's consent in the following proceedings:
 - (A) Arraignment;
 - (B) Bond reduction hearing;
 - (C) Non-evidentiary hearing;
 - (D) Pretrial conference, and
 - (E) Preliminary probation revocation hearing.
2. With the consent of the Commonwealth's Attorney and the defendant in the following proceedings:
 - (A) Guilty plea;
 - (B) Sentencing;
 - (C) Final probation revocation hearing, and
 - (D) Evidentiary hearing, not including trial.

B. The defendant's attorney may be physically present with the defendant at the Detention Center or the defendant's attorney may be physically present at the Fayette County Courthouse and be present with the defendant by means of two-way audio-video communications. If the defendant's attorney is physically present at the Courthouse and is present with the defendant by means of two-way audio-video communications, a secure audio communications device shall be provided whereby the defendant and the defendant's attorney may communicate privately with each other.

C. The two-way audio-video communications will allow the defendant to simultaneously hear and observe the Judge, the Commonwealth's Attorney, the defendant's attorney, if the defendant's attorney is not physically present with the defendant at the Detention Center, and any witness.

D. The proceedings shall be open to the public and the two-way audio-video communications shall be visible and audible to persons present at the proceedings in the Fayette County Courthouse.

Rule 13. PROBATION: ALLOCATION OF INSTALLMENT PAYMENTS

Unless otherwise ordered by the sentencing Judge, the Clerk shall allocate installment payments made by Defendants who are on probation in the following order:

1. Payment of Court costs;
2. Restitution ordered by the Court;
3. Attorney fee to Legal Aid, Inc. or Department of Public Advocacy;

4. Probation supervision fee.

RULE 14. ASSIGNMENT OF CIVIL JURY CASES

A. A party desiring assignment of a civil jury trial date shall file a motion for a pre-trial conference.

B. A pre-trial conference shall be held as a matter of course in all jury actions; upon the motion of either party, in the Court's discretion, or upon the Court's own motion in any other action.

C. At the pre-trial conference, the Judge may:

1. Assign or reassign the case for trial;
2. Set an additional pre-trial conference or status conference;
3. Set time limitations if the Court determines that a case is not proceeding to disposition;
4. Decline to set the case for trial;
5. Refuse to continue the trial in the case; or
6. Take such other action as may be appropriate.

D. Cases that have been previously set for trial and continued, shall not be given preference as to trial date except for good cause shown.

E. When the case is set for a pretrial conference the attorneys shall submit an order setting the date, unless an order is entered by the Court. Orders from the pretrial conference may be provided to the attorneys of record by the Court, or as the Court directs. Attorneys shall fully comply with such orders.

F. The attorney attending the pre-trial conference shall be familiar with the case and shall be prepared and authorized to make such arguments, stipulations and decisions as may be required.

G. A pretrial order shall be entered by the Court incorporating the Court's rulings, agreements or stipulations of the parties and any matter designated by the Court upon the conclusion of the pretrial conference. The Court may require the parties to submit a trial brief consisting of a short memorandum of the facts and law on which they will rely, and fix the time for filing such briefs in the pretrial order.

RULE 15. MOTIONS IN CIVIL CASES

A. Form of Motion.

1. All motions to be argued at Motion Hour and notice of the hearing, other than those set forth in (2) below or those that may be heard ex parte, shall be filed with the Clerk, and served by hand delivery, mail or facsimile on opposing parties and the Court to be heard at the next motion hour. Motions to be heard must be received by opposing counsel 72 hours prior to the noticed motion hour. Responses shall be filed within 24 hours of the noticed motion hour.

The notice of the hearing shall specify the date, time and place for the hearing.

2. Motions to dismiss, motions for summary judgment, motions to strike, and motions under CR 12.02 shall be filed and served upon opposing party and/or attorney(s) at least 10 days prior to motion hour and accompanied by a memorandum of the grounds for the motion with citation of authorities relied upon, but not greater than 25 pages in length, unless permitted by prior order. Failure to file a memorandum with supporting authorities may be grounds for overruling the motion. Any party properly served with a motion accompanied by a memorandum and authorities shall file a response opposing the motion, with citation of supporting authorities, but not greater than 25 pages in length except by leave of Court. Such response shall be filed at least 72 hours prior to the time specified in the notice of hearing of the motion. Failure to file a timely response may be grounds for sustaining the motion, but the time for filing a response may be extended upon oral or written motion for good cause shown, including such factors as the length and complexity of the motion and supporting memorandum and time of service of the motion. Any reply memorandum shall be limited to 5 pages in length, and must be filed 24 hours prior to hearing.

3. Non-jury cases will be assigned for trial only upon motion at the call of the Motion Docket, or at pre-trial conferences, at which time the Court shall be informed of the probable duration of the trial and any conflicting trial obligations of counsel for the parties.

4. A motion to compel discovery, for a protective order, or for sanctions may be filed pursuant to CR 26 and/or CR 37 only if counsel are unable to resolve between themselves the discovery dispute. Counsel has the duty to make a good faith effort to resolve any disputes which arise in the course of discovery. The moving party shall attach to the motion a certification of counsel that he or she has attempted to resolve the dispute and that they have been unable to do so. The certification should detail the attempts of counsel to resolve the dispute.

B. Docketing and Appearances

1. The Clerk shall keep a Motion Docket on which he or she will docket all motions assigned for hearing on each Motion Day, either by Court order or by notice duly served. The Clerk will keep separate dockets for each Division.

2. Every motion, except as otherwise provided herein, and other than ones which may be heard ex parte, shall appear on the Motion Docket. However, no motion or action shall be heard on Motion Day unless the motion is filed with the Clerk before 4:00 P.M. on Monday preceding the Motion Day designated on the notice, except by leave of Court.

3. The Motion Docket will be called and heard in the order docketed, unless otherwise ordered. When the case is called, participating counsel shall stand in place, answer the call, and advise the Court if a hearing is necessary in the matter. If a hearing is necessary, the case shall be passed to the second call of the docket, or to such time as the Court may direct.

4. It is the obligation of attorneys scheduled to appear at a given motion hour to ascertain whether the motion hour has been canceled or rescheduled by the Court.

C. Agreed Orders.

1. If an agreed order, signed by counsel for all parties affected, relating to a motion appearing on the Motion Docket is submitted to the Clerk prior to the call of the Motion Docket, counsel need not attend the call of the Motion Docket. The agreed order shall set forth the basis for the order.
2. Out-of-Court resolution of discovery disputes may be effectuated, if desired, by submitting to the Court an agreed order signed by counsel for all parties affected by the order. No supporting motion is necessary, and the matter need not be placed on the Motion Docket.

D. PROPOSED ORDERS SHALL NOT BE FILED OR SUBMITTED WITH THE MOTION.

RULE 16. EXHIBIT RETENTION AND DISPOSAL

A. The Clerk shall take immediate custody of all exhibits introduced and retain same until disposed pursuant to other sections in this rule.

B. Exhibits introduced by the Commonwealth in a criminal action where a verdict of guilty was returned or a plea of guilty was entered shall be retained by the Clerk for a period of two years from the expiration of time for an appeal unless an order is entered by the Court extending the time for retaining said exhibits. After the time period has expired, all exhibits shall be delivered to the Commonwealth Attorney who shall review the exhibits and make a motion to the Court as to which exhibits shall be declared contraband and which exhibits shall be declared forfeited under the applicable statutes.

C. Exhibits introduced by the Commonwealth in a criminal action wherein the defendant was found not guilty shall be delivered to the Commonwealth Attorney or returned to the defendant as set forth in D below. The Commonwealth Attorney shall make a motion to the Court to have any property declared contraband or forfeited property as permitted by the statute and make a recommendation to the Court regarding how the exhibits can be disposed. The Commonwealth Attorney shall have the responsibility of disposing of all other exhibits except forfeited property or contraband in accordance with applicable law.

D. Exhibits introduced by the defendant in a criminal action wherein the defendant was found not guilty shall be returned upon order of the Court to the defendant or his attorney within 30 days from notification by the Clerk. If the exhibits are not picked up by the defendant or his attorney within that time, the Clerk shall dispose of said exhibits pursuant to the records retention schedule of the Administrative Office of the Courts, or as ordered by the Court.

E. In all civil cases the Clerk shall notify the attorneys for the parties that exhibits introduced during any proceedings in civil matters shall be picked up within 30 days after the time for appeal has expired. If the attorneys do not pick up the exhibits within that time, the Clerk shall dispose of the exhibits pursuant to the records retention schedule of the Administrative Office of the Courts or as ordered by the Court.

F. Exhibits that are too bulky to be included with the transcript on appeal shall be retained by the Clerk until the final appeal has been decided after which they shall be disposed in accordance with the foregoing procedure.

G. Notwithstanding any provision to the contrary, the parties with the Court's approval may agree in a civil or criminal case for an exhibit or exhibits to be returned to a party or other entity and to be retained by the party or other entity pursuant to the agreement of the parties.

RULE 17. RETENTION OF VIDEOTAPES AND CD'S

A. Notwithstanding any statute, rule or order authorizing a shorter retention period, videotapes in civil and criminal cases shall be retained by the Fayette Circuit Court Clerk as follows:

(1) Civil Cases: The "A" tape shall be retained for a minimum of five (5) years from the date of a final judgment or final order of dismissal, and the "B" tape shall be retained for a minimum of one (1) year from the date of such judgment or order. If the case were appealed, the A and B tapes would be retained permanently.

(2) Criminal Cases:

(a) Felony Cases:

1. If there is a judgment of conviction, the "A" tape shall be retained ten (10) years, and the "B" tape shall be retained for five (5) years from the date of a final judgment. If the case were appealed, the A and B tapes would be retained permanently.

2. If the defendant is found "not guilty" or the proceedings against the defendant are dismissed, the "A" tape shall be retained for five (5) years from the date of a final judgment or final order of dismissal, and the "B" tape shall be retained for one (1) year from the date of such judgment or order.

(b) Misdemeanor Cases:

1. If there is a judgment of conviction, the "A" tape shall be permanently retained, and the "B" tape shall be retained for five (5) years from the date of a final judgment. If the case were appealed, the A and B tapes would be retained permanently.

2. If the defendant is found "not guilty" or the proceedings against the Defendant are dismissed, the "A" tape shall be retained for five (5) years from the date of a final judgment or final order of dismissal, and the "B" tape shall be retained for one (1) year from the date of such judgment or order.

B. For the purpose of this rule, "final judgment" or "final order of dismissal" means a judgment or order which finally concludes the case and from which an appeal has not been taken within the time allowed or which has been affirmed by a final decision of an appellate court

RULE 18. FORM OF MOTIONS AND OTHER PAPERS

Except for exhibits, all pleadings, motions, orders and other papers filed with the Court shall be typewritten or printed in black ink, no smaller than 12 point; on one side only on unglazed white paper 8 ½ by 11 inches in dimension; leaving at least a double space between lines, a 1 inch margin on the left side, and shall be clearly readable. These requirements shall not apply to orders, judgments and other papers routinely prepared or utilized by the Court or to pleadings, motions, orders and other papers routinely utilized by attorneys or court related agencies and approved by the Court.

RULE 19. ENTRY OF ORDERS AND JUDGMENTS

A. Whenever any ruling is made or opinion rendered, an order or judgment in conformity therewith shall be attested by counsel for all parties thereto as being in conformity to the ruling or opinion, and shall be presented to the Court.

B. The endorsement required by paragraph A above shall not be required where:

1. Counsel for the party(s) against whom the order is to be entered refuses to attest the order;
2. Counsel for the party(s) against whom the order is to be entered fails to return the order to counsel who prepared it within three business days of receipt of order;
3. The party against whom the order is to be entered is not represented by counsel; or
4. There was no opposition to the motion at Motion Hour.

Where any of the above apply, preparing counsel shall so attest.

C. When signed by the Judge, the order or judgment shall be delivered to the Clerk for entry. Counsel preparing the order or judgment SHALL ALSO DELIVER TO THE CLERK A SUFFICIENT NUMBER OF COPIES TOGETHER WITH PROPERLY ADDRESSED, STAMPED ENVELOPES to permit the Clerk to complete service thereof when required by CR 77.04. Counsel may waive service of any order or judgment, and notice of entry.

D. PROPOSED ORDERS SHALL NOT BE FILED OR SUBMITTED WITH THE MOTION.

RULE 20. DEFAULT JUDGMENTS

A party seeking a judgment by default under CR 55.01 shall file a written motion therefore. The motion shall be accompanied (a) by a certificate of the attorney that no papers have been served upon the attorney by the party in default and (b) by an affidavit stating whether the party in default is in the military service.

If the party in default has failed to appear in the action, the motion need not appear on the motion docket and no notice thereof need be given the party against whom judgment by default is sought. To submit an action for judgment against a party in default for failure to appear, the party seeking the

judgment shall place the entire record in the action, the motion and the proposed judgment, in the appropriate division's orders/judgments box in the Clerk's office.

If the party in default has appeared in the action, the motion shall appear on the motion docket and the party in default, or if the party is appearing by representative, the party's representative, shall be served with written notice of the motion at least three (3) days prior to the hearing thereon. If the action is ordered submitted at the hearing the party seeking the judgment shall place the entire record in the action and the proposed judgment in the appropriate division's orders/judgments box in the Clerk's office.

RULE 21. LEGAL BRIEFS AND MEMORANDA

Legal briefs or memoranda shall be filed of record in the Clerk's office. Copies of cases cited therein shall not be filed but shall be placed in the Judge's box along with a copy of the legal brief or memorandum.

RULE 22. ANSWERING AND FILING INTERROGATORIES OR REQUESTS

Interrogatories propounded under CR 33 and answers thereto, requests for production or inspection under CR 34 and answers thereto, and requests for admission under CR 36 and answers thereto shall not be filed with the Court. A one-page notice of service under CR 33, CR34 and CR36, SHALL be filed in the record to prevent the case being placed on the show cause docket.

RULE 23. FILING OF DEPOSITIONS

Originals of depositions shall not be filed in the Court record. The attorney who noticed the taking of a deposition shall be custodian of the record for the original deposition (and video tape, if one is taken), and shall present it when directed by the Court or any party involved in the proceedings. If ordered by the Court, relevant pages of a condensed deposition transcript shall be filed in the record if the deposition is the subject of any motion before the Court.

RULE 24. ORDER OF SUBMISSION

A. Upon submission of any matter to the Court for decision or final judgment, the parties shall prepare and present to the Court an order of submission setting forth in particular the issue or issues on which the action is submitted.

B. An action shall be submitted only upon the entry of an order of submission. The order of submission along with the record shall be placed in the appropriate orders/judgments box in the Clerk's Office.

C. No further pleadings, proof or briefs, unless ordered or allowed by the Court for good cause shown, shall be filed after the entry of the order of submission.

D. The Court may, but need not, pass upon any such action before such order of submission.

E. The conclusion date of a trial or hearing at which a commissioner or hearing officer presided shall be that date when an order of submission is entered by the Commissioner or hearing officer.

F. In accordance with KRS 454.350, the Court or Commissioner shall file an opinion or report within ninety (90) days of the entry of the order of submission.

RULE 25. DISMISSAL OF ACTION FOR FAILURE TO PROSECUTE

When any action has remained on the Civil Docket for one year without any step being taken indicating an intention to prosecute, the action may be dismissed for want of prosecution on motion of either party or on the Court's own motion.

RULE 26. PRACTICE BEFORE THE MASTER COMMISSIONER

A. Hearings

1. An attested copy of the order referring the case to the Master Commissioner shall be delivered to the Master Commissioner's office.

2. The Commissioner shall then promptly assign a date for a pre-hearing conference and give written notice thereof. The attorney responsible for the case shall be expected to personally attend said hearing. The Commissioner may charge and collect a fee in accordance with Part IV, section 4 of the Administrative Procedures of the Court of Justice.

3. Friday at 11:00 A.M. is designated as the Master Commissioner's motion hour at which time all motions before him or her, unless otherwise designated, shall be heard. The Master Commissioner will hold the motion hour in the Grand Jury Room of the Fayette Circuit Court Building, unless otherwise designated.

4. An attorney requesting a hearing date before the Master Commissioner may be responsible for providing a Court reporter at all evidentiary hearings.

5. Any money paid into Court pursuant to CR 67.01 shall be paid to the Master Commissioner who is authorized to charge a fee as follows:

- a. 3% of the first \$2,000.00;
- b. 2 1/2% of the next \$3,000.00; and
- c. 1 1/2% for any amount in excess of \$5,000.00,
total fee not to exceed \$5,000.00.

B. JUDICIAL SALES

1. Master Commissioner Approval

In addition to other requirements of these Rules, all judgments or orders directing the sale of property by the Master Commissioner, directing the disbursement of monies held by the Commissioner or

directing the delivery of a deed must be submitted along with the record to the Commissioner for certification that it complies with all applicable statutes and rules. The Commissioner shall then deliver the judgment or order to the Court for approval and entry.

2. Deposit for Advertisement and Appraisal

When any order is submitted to the Commissioner requiring advertisement or appraisal, the party submitting the order shall deposit with the Commissioner an amount sufficient to pay the estimated costs of the proposed advertisement and/or appraisal. The Commissioner shall not submit the order to the Court nor cause an advertisement or appraisal to be made until such deposit is made.

When more than one sale is set for the same date, the Commissioner may advertise all such sales in one advertisement that includes the required information applicable to each action and sale. The total cost of advertising shall be apportioned among each of the various cases to which the advertisement applies.

3. Orders of Sale and/or Delivery of Deed

Every order or judgment of this Court directing the Commissioner to sell property or to execute or deliver a deed shall contain:

- a. The legal description of the property including a street address (or if it has not street address, a brief description of its location and size;
- b. The name of the parties or parties whose interest is being sold or conveyed;
- c. The source of that party (or parties') title with deed book, page number and date of deed or recording date of deed;
- d. A blank space for the insertion of the sale date by the commissioner's office;
- e. A signature line for the master commissioner indicating certification and compliance;
- f. A prepared by signature line of the attorney submitting order;
- g. A certificate of service by the Circuit Court Clerk;
- h. Appropriate number of copies for all parties including submitting attorney and Master Commissioner; and
- i. Self addressed stamped envelopes for all parties including submitting attorney.
- j. All orders shall be submitted to the master commissioner prior to Court approval.

4. Terms and Conditions of Sale

Unless otherwise ordered all sales shall be conducted by the Commissioner or Deputy Commissioner at 12:00 noon (local time) in the Fayette County Courthouse at a place posted the morning of the sale, upon the following terms and conditions:

- a. Before conducting a sale the Master Commissioner shall advertise in a newspaper meeting the requirements of KRS 424.120, the time, terms and place of sale, together with a description of the property to be sold. The advertisement shall appear once a week for at least three consecutive weeks next preceding the date of sale.

b. If required by order or statute, the Master Commissioner before making a sale of real property shall have the property appraised by two intelligent, disinterested housekeepers of Fayette County who are not related to any parties to the action. Before making appraisals, the appraisers shall be sworn by the Master Commissioner. They shall return their appraisals in writing to the Master Commissioner who shall file same as a part of the record.

c. The property shall be sold to the highest bidder provided:

1). At the time of sale the successful bidder shall either pay cash or make a deposit of 10% of the purchase price with the balance on credit for sixty (60) days. If the purchase price is not paid in full, the successful bidder shall be required to give bond with good surety for the unpaid purchase price. The bond shall bear interest at the rate of twelve (12%) percent per annum from the date of sale until paid.

2). The purchaser shall be required to assume and pay all taxes or assessments upon the property for the current tax year and all subsequent years. All taxes or assessments upon the property for prior years shall be paid from the sale proceeds if properly claimed, in writing and filed of record, by the purchaser prior to confirmation.

3). The property shall otherwise be sold free and clear of any right, title or interest of all parties to the action and all liens and encumbrances thereon, excepting easements and restrictions of record in the Fayette County Clerk's Office and such right of redemption as may exist in favor of the United States of America or the defendant(s).

4). The terms and conditions hereinabove set out may be adopted by reference to this rule in the order or judgment directing the sale, or shall be restated therein.

d. A party, who is the successful purchaser of the property, may take credit against any judgment in that party's favor against the defendant property owner for the required deposit and purchase price to the extent that the sale price is sufficient to pay such judgment considering the priorities and amounts previously adjudicated in the action.

5. Confirmation of Report of Sale

The Master Commissioner after making the sale shall report his actions to the Court. Ten (10) days after the filing of that report, if no objections have been filed thereto and without motion, the sale shall be deemed confirmed and an order confirming the sale (with sufficient copies, see RFCC 19) shall be submitted to the Court. A copy of the order of confirmation shall be served upon the purchaser.

6. Fees of the Commissioner

The Commissioner shall be entitled to those fees set forth in Part IV of the Administrative Procedures of the Court of Justice.

7. Orders of Distribution

- a. Orders requiring distribution of funds held by the Commissioner shall set forth all amounts collected, identify the proper recipient(s) and the specific amounts due each under the judgment or order.
- b. If disbursements are to be made to taxing authorities, a copy of the pertinent tax bill(s) must be furnished the Commissioner, giving the commissioners office sufficient time to pay the bill(s) with the amount(s) listed in the order.

8. Appraiser's Fees

In all residential sales where an appraisal is required, the fee of each appraiser shall be \$150.00, unless otherwise ordered by the Court. Appraisal fees for commercial, farm and other sales shall be set by the court. The fee shall be paid from the proceeds of sale.

C. WRIT OF POSSESSION AND ATTACHMENT PROCEDURE

1. Pursuant to KRS 425.006, the Master Commissioner and the Deputy Commissioners are appointed judicial officers to perform such duties as may be required of them by Chapter 425 of the Kentucky Revised Statutes.
2. All requests for hearings, or ex parte relief under the provision of that Chapter shall stand automatically referred, without order, to the Commissioner's office for further proceedings.
3. When a hearing has been requested or is required, it shall be the responsibility of the attorney requesting the hearing to notify the Commissioner's office of the request, after which the Commissioner shall fix a time and place for hearing and give written notice thereof to the parties.
4. Requests for ex parte and temporary restraining orders shall be immediately delivered to the Commissioner, along with the record, by the Clerk of this Court or the attorney requesting relief. The Commissioner shall then make a determination.

RULE 27. PROCEDURE ON RULES FOR CONTEMPT

To procure a show cause order in proceedings for contempt:

- A.** A motion supported by a sufficient affidavit showing that applicant is entitled to the Order must be filed.
- B.** When this motion and affidavit is filed, an Order may be issued ex parte which shall not come on for hearing sooner than five (5) days from the date it is served, unless otherwise ordered by the Court. The Respondent shall appear on the date noticed for hearing, but may be entitled to a continuance if served less than 5 days from the date noticed.

C. No order shall come on for hearing unless it has been served on the person named in the Order by an officer authorized to serve a summons. The Order shall contain a short statement of the grounds for its issuance and the following statement:

**IF YOU FAIL TO APPEAR AT THE HEARING,
A WARRANT FOR YOUR ARREST WILL ISSUE**

RULE 28. REMOVAL OF RECORDS

No record in any civil or criminal action shall be removed from the Office of the Clerk of the Fayette Circuit Court, except as needed by the Court.

RULE 29. MEDIATION

A. Cases for Mediation

Any judge may refer any civil or family case to mediation except a habeas corpus case or election contest.

B. Referral to Mediation

1. The Judge may, by appropriate order, refer the case to mediation with or without the consent of the parties. Cases may be referred to the Mediation Center of Kentucky, Inc. or to any other mediator appointed by the Court or agreed upon by the parties.
2. Any party may move to enter an order disqualifying the mediator for good cause. If the Court rules that a mediator is disqualified from mediating the case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.
3. Referral of a case to mediation shall not operate as a stay of discovery proceedings unless otherwise ordered by the Court or agreed to in writing by the parties.

C. Mediation Conferences

1. The parties shall contact the mediator within five (5) days from the entry of the order to schedule a mediation conference, which shall be held within thirty (30) days from the entry of the order.
2. If a party fails to appear at a duly noticed mediation conference without good cause, the Court upon motion shall impose sanctions, which may include an award of attorney fees and other costs against the party failing to appear. If a party to mediation is a public or corporate entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity. In all other cases, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

- a. The party, or on behalf of a public or corporate entity, a representative other than the party's counsel of record having full authority to settle without further consultation; and
- b. A representative of the insurance carrier for any insured party who is not such a carrier's outside counsel and who has full authority to settle without further consultation.

The party's counsel of record, if any, may also be present.

3. The mediator may request that the parties bring documents or witnesses, including expert witnesses, to the sessions, but has no authority to order such production.

D. Confidentiality

1. Except as otherwise provided by this rule or ordered by the Court for good cause shown, all mediation documents and mediation communications except signed agreements are confidential and shall not be disclosed. They are not subject to disclosure through discovery or any other process, and are not admissible into evidence in any judicial or administrative proceeding.
2. No part of the mediation proceedings shall be considered a public record, unless entered into the record by the Court.
3. There is no confidentiality and no restriction on disclosure under this rule to the extent that:
 - a. All parties consent in writing to disclosure; or
 - b. The mediation communication or mediation document gives the mediator or persons associated with the mediator's office, knowledge of or reasonable cause to suspect that a child or a spouse has been abused or a child has been neglected; or
 - c. The mediation communications were made in furtherance of the commission of a crime or fraud or as part of a plan to commit a crime or fraud.
4. Nothing in this rule shall be construed so as to permit an individual to obtain immunity from prosecution for criminal conduct.

E. Reporting to the Court

1. The mediator shall notify the Court promptly in writing when a case is not accepted for mediation.
2. At any time after a case has been accepted, the mediator may refer it back to the Court for good cause, which shall be in writing.
3. If a case is settled prior to or during mediation, an attorney for one of the parties shall prepare and submit to the Court an order reflecting the fact of settlement as in any other case.

4. If some but not all of the issues in the case are settled during mediation or if agreements are reached to limit discovery or on any other matter, the parties shall submit a joint statement to the Court enumerating the issues that have been resolved and the issues that remain for trial. This statement shall be submitted within 10 days of the termination of mediation. Unsettled cases shall then be returned to the Court's active docket.

5. At the conclusion of cases accepted for mediation, the mediator will report to the Court in writing the fact that the mediation process has ended. If the parties do not reach an agreement as to any matter as a result of mediation, the mediator shall report the lack of an agreement to the Court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions, outstanding legal issues, discovery process or other action by any party which, if resolved or completed, would facilitate settlement.

RULE 30. APPEALS FROM DISTRICT COURT

A. Upon the filing of a proper notice of appeal in the District Court and the payment of costs as may be required by the Civil Rules, the Clerk shall forward the entire original record as described in CR 72.04 to the Clerk of the Circuit Court.

B. Upon receipt of the record from the District Court, the Circuit Clerk shall assign the case to a division in the same manner as done with other civil and criminal cases.

C. If the appeal is not perfected by the filing of a statement of appeal as provided by CR 72.06 within 30 days from the date of filing the first notice of appeal as provided by CR 72.08, and no motion for extension of time is filed within 10 days after that, and no notice of cross-appeal has been filed as provided by CR 74, the Clerk will prepare an order of dismissal and remand, attach same to the record and place the record and order in the box of the Judge of the division to which the case is assigned.

D. If the statement of appeal is timely filed and no counter-statement is filed pursuant to CR 72.12 within 30 days thereafter, and no motion for extension of time is filed within 10 days after that, the Clerk will prepare an order of submission, attach same to the record and place the record and order in the box of the Judge of the division to which the case is assigned.

E. When a counter statement is filed by an appellee or cross-appellant, whether or not a statement of appeal has been filed, the Clerk will prepare an order of submission, attach same to the record and place the record and order in the box of the Judge of the division to which the case is assigned.

F. All orders of dismissal, submission and opinions and orders affirming or reversing the District Court will be served upon all parties or their attorneys and the trial Court Judge.

All orders which make final disposition of an appeal will provide for the payment of costs and remand the case to the District Court. The Clerk will comply with CR 77.04(2) and if no motion for discretionary review is filed pursuant to CR 76.20 within 30 days thereafter the record will be returned to District Court.

G. All agreed orders deciding or affecting the issues on appeal must clearly state either (a) that the appeal is dismissed and the case remanded to the District Court for specific action or judgment or (b) that certain specified issues remain to be decided.

The parties may not agree that the appeal be stayed pending the happening of some event and such relief may only be obtained upon motion and order of the Court.

H. If an appeal is from a proceeding in which there is only an audio recording, the appellant shall request from the Clerk of the Appeals Division a video stream recording of the proceedings to certify on appeal. There shall be a \$15.00 fee for the recording.

RULE 31. PRO-SE LITIGATION

The court may order the Clerk not to file a pro se in forma pauperis action if the Court is not satisfied that the plaintiff is indigent as defined in KRS 453.190(2) or, if the Court is satisfied that the action raises no reasonable or justiciable question frivolous or malicious. The order shall be retained by the Clerk in a file maintained for such purpose. A suitable index of the file shall be kept by the Clerk.

RULE 32. POST-TRIAL CONTACT WITH JURORS

No party, attorney, or representative of any party or attorney, shall communicate with a member of a jury without leave of Court.

Court approval for the interviews of or communication with the jurors after trial will be granted only upon proper showing of good cause and subject to such conditions as the Court shall prescribe.

RULE 33. EFFECTIVE DATE

These rules are adopted pursuant to the authority granted by Rule 1.040(3) of the Rules of the Supreme Court and they shall apply with full force and effect to all actions filed or pending after January 1, 2009, and their promulgation is by order of the Judges of the Fayette Circuit Court and certification of the Chief Justice of the Supreme Court.

INDEX TO RULES OF FAYETTE CIRCUIT COURT

		PAGE
Agreed Orders	RFCC 15	9
Answers to Interrogatories	RFCC 20	13
Appeals	RFCC 31	21
Assignment of Cases		
Civil	RFCC 4	3
Criminal	RFCC 6	3
Civil Juries	RFCC 13	7
Attachment	RFCC 26	18
Briefs	RFCC 21	13
Citation of Rules	RFCC 1	1
Commissioners		
Master Commissioner	RFCC 26	14
Judicial Sales	RFCC 26	15
Possession & Attachment	RFCC 26	18
Commissioner	RFCC 26	14
Contempt	RFCC 27	18
Criminal		
Assignment	RFCC 4	3
Motions	RFCC 6	3
Expenses	RFCC 7	4
Arraignment	RFCC 8	4
Withdrawal	RFCC 9	4
Pre-Trial Conference	RFCC 10	5
Probation Payments	RFCC 11	5
Retention		
Notes and Tapes	RFCC 17	10
Exhibits	RFCC 16	9
Default Judgments	RFCC 20	12
Depositions	RFCC 23	13
Dismissals	RFCC 25	14
Effective Date	RFCC 33	23
Failure to Prosecute	RFCC 25	14
Filing		
Depositions	RFCC 23	13
Interrogatories	RFCC 22	13
Requests	RFCC 22	13
Grand Juries	RFCC 5	3
Installment Payments	RFCC 13	6
Interrogatories	RFCC 22	13

		PAGE
Judgments		
Entry	RFCC 17	9
Default	RFCC 18	13
Judicial Sales	RFCC 26	15
Master Commissioner	RFCC 26	14
Mediation	RFCC 29	19
Memoranda	RFCC 21	13
Motion Docket	RFCC 3	2
Motion Hours		
Civil	RFCC 3	2
Criminal	RFCC 6	3
Before Commissioner	RFCC 26	14
Motions		
Civil	RFCC 15	8
Criminal	RFCC 6	3
Motions and Other Papers	RFCC 18	11
Non-Jury Cases	RFCC 15	8
Orders	RFCC 15	9
Submission	RFCC 24	13
Organization	RFCC 2	1
Possession, Writ of	RFCC 27	18
Post-trial Contact with Jurors	RFCC 32	22
Pre-Trial Conferences		
Civil	RFCC 14	7
Criminal	RFCC 10	5
Probation		
Payments	RFCC 13	6
Pro Se Civil Actions		
Filed In Forma Pauperis	RFCC 31	22
Removal of Records	RFCC 28	18
Retention		
Exhibits	RFCC 16	9
Notes, etc.	RFCC 16	9
Stipulations	RFCC 13	6
Submission	RFCC 24	13
Withdrawal	RFCC 9	4

FAYETTE CIRCUIT COURT JUDGES

JUDGE TIMOTHY PHILPOT	FIRST DIVISION
JUDGE JOHN SCHRADER	SECOND DIVISION
JUDGE JAMES D. ISHMAEL, JR.	THIRD DIVISION
JUDGE PAMELA GOODWINE	FOURTH DIVISION
JUDGE LUCINDA MASTERTON	FIFTH DIVISION
JUDGE JOANN WISE	SIXTH DIVISION
JUDGE ERNESTO SCORSONE	SEVENTH DIVISION
CHIEF JUDGE THOMAS CLARK	EIGHTH DIVISION
JUDGE KIMBERLY N. BUNNELL	NINETH DIVISION